IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6763 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATILAL AMRATLAL VYAS PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6763 of 2003

MR ASIT B JOSHI for Petitioner No. 1

MR LB DABHI, ASST. GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 19/01/2004

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri L.B. Dabhi for the respondents.

2. The grievance, which has been ventilated by the petitioner in the petition, is with regard to not granting any interim relief, though the revision application filed by the petitioner has been admitted by the respondent Government on 8.4.2003.

3. Learned advocate Shri Joshi appearing for the petitioner has submitted that the petitioner is a trustee of Shree Ghela Somnath Sarvajanik Dharamshala Trust. It appears that the trust had made encroachment on some government land and thereafter had made a request for regularization of the encroachment. The Collector turned down the request and, therefore, against the order passed by the Collector dated 19.2.2003, a revision application has been filed by the petitioner. The said revision application has been admitted, but no interim relief has been granted.

4. It has been submitted by learned advocate Shri Joshi appearing for the petitioner that the petitioner trust has put up some construction on the land in question. If, during the pendency of the revision application, the petitioner's possession is not protected, and if ultimately the petitioner succeeds in the revision application, irreparable damage would be caused to the petitioner because the petitioner will have to hand over the possession to the government authorities and in that event, the construction put up on the land in question would also be demolished. It has been, therefore, submitted by him that during the pendency of the revision application, the petitioner's possession should be protected.

5. It has been very fairly submitted by the learned advocate that if the revision application if fixed for hearing at an early date, the advocate appearing for the petitioner before the revisional authority shall not unnecessarily pray for time and shall extend his co-operation to the revisional authority so that the revision application can be decided at an early date.

6. On the other hand, learned AGP Shri Dabhi appearing for the respondent authorities has submitted that the petitioner had no right to use the government land and the encroachment made on the government land was absolutely unfair and improper and, therefore, the encroachment must be removed first. It has been, therefore, submitted that the impugned order is just, legal and proper.

7. Looking to the facts of the case, in my opinion, justice would be done to the petitioner if possession of the petitioner is protected during the period when the revision application is pending before the authority. If the petitioner's construction is demolished and he is asked to hand over possession, and ultimately if the petitioner succeeds in the revision, irreparable damage would be caused to the petitioner.

8. Looking to the facts stated above, the impugned order, whereby an application for stay has been rejected, is quashed and set aside.

9. The State of Gujarat is directed to hear Revision Application No. 7 of 2003, which has been referred to at page 12 of the petition, as soon as possible and preferably within a period of 2 months from today. Till the revision application is finally decided, the possession of the petitioner shall be protected. If the revision application is decided against the petitioner, the petitioner shall not be asked to vacate the land in question for a period of 7 days from the date of receipt of a copy of the order by the petitioner. As assured to this court by the learned advocate, the petitioner's advocate shall not pray for time before the revisional authority and shall extend his co-operation so that the revision application can be decided as soon as possible.

The petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. D.S. permitted.

(A.R. Dave, J.)

(hn)